

REMARKS

Claims 1-23 are pending. No new matter has been added by way of the present amendment. For instance, claim 2 has been amended to remove the recitation of “polyester” and replace it with “polymer” to correct an issue of antecedent basis. This is a non-narrowing amendment which does not add new matter.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Issues Under 35 U.S.C. §112, Second Paragraph

The Examiner has rejected claims 2-17 and 22 under 35 U.S.C. §112, second paragraph, for the reasons recited at page 2 of the outstanding Office Action. Applicants respectfully traverse.

The Examiner has asserted the term “polyester” in claim 2 lacks proper antecedent basis. Applicants have corrected this issue by replacing the recitation of “polyester” with “polymer.” Accordingly, this issue is moot. Reconsideration and withdrawal thereof are respectfully requested.

Obviousness-type Double Patenting

The Examiner has rejected claims 1-23 under the judicially-created doctrine of obviousness-type double patenting as being obvious over claims 1-77 of U.S. Patent No. 6,358,660 and claims 1-71 of U.S. Patent No. 6,410,200 in view of EP 351085. Applicants respectfully traverse.

Attached hereto is a Terminal Disclaimer relating to U.S. Patent Nos. 6,358,660 and 6,410,200 and along with the suitable Terminal Disclaimer Fee (small entity) of \$65.00. Accordingly, this rejection is moot. Reconsideration and withdrawal thereof are respectfully requested.

Issues Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1-23 under 35 U.S.C. §103(a) as being obvious over the combination of EP 351,085, DeVries '591, Coleman and Williams et al. U.S. Patent No. 6,410,200 (Williams '200). Applicants respectfully traverse this rejection.

Applicants note that the respective 35 U.S.C. §102(e) filing dates of the present application and Williams '200 are September 29, 1999 and April 1, 1999, respectively. Therefore, the Williams '200 reference qualifies as prior art under only 35 U.S.C. §102(e)/103(a).

However, at the time of the present invention the Williams '200 application was subject to an obligation of Assignment to a common Assignee, Foto-Wear, Inc. Therefore, Williams '200 is not valid prior art in a §102(e)/§103(a) rejection since it is excluded under 35 U.S.C. §103(c).

As evidence of the common assignment, Applicants direct the Examiner's attention to the assignment in the name of Foto-Wear, Inc. filed in the application corresponding to Williams '200 on August 11, 2000 and recorded at Reel/Frame 011062/0059. A copy of the USPTO Patent Assignment Abstract of Title for Williams '200 is also attached. Likewise, the

Examiner's attention is drawn to the assignment in the name of Foto-Wear, Inc. filed in the present application on December 18, 2002 and recorded at Reel/Frame 013603/936.

In view of the above, Williams '200 has been removed as prior art under 35 U.S.C. §103(a)/102(e). Accordingly, the Examiner's rejection based on EP 351,085, DeVries '591, Coleman and Williams '200 is moot. The Examiner is therefore requested to withdraw this rejection.

In view of the above, Applicants respectfully submit that the present application is in condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw all rejections and allow the currently pending claims.


If the Examiner has any questions or comments, please contact Craig A. McRobbie, Reg. No. 42,874 at the offices of Birch, Stewart, Kolasch & Birch, LLP.

Pursuant to the provisions of 37 C.F.R. §§ 1.17 and 1.136(a), the Applicants hereby petition for an extension of three (3) months to December 24, 2005 in which to file a reply to the Office Action. The required fee of \$510.00 is enclosed herewith.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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